



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

518-804-4000 telephone • 512-804-4811 fax • [www.tdi.texas.gov](http://www.tdi.texas.gov)

## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

M.A.P.A. ON BEHALF OF:  
SAINT MICHAEL HOSPITAL  
12000 FORD ROAD STE 400  
DALLAS, TX 75234

DWC Claim #:  
Injured Employee:  
Date of Injury:  
Employer Name:  
Insurance Carrier #:

#### **Respondent Name**

TRUCK INSURANCE EXCHANGE

#### **Carrier's Austin Representative Box**

Box Number 14

#### **MFDR Tracking Number**

M4-98-5074-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary:** "The health care provider's position is that fair and reasonable reimbursement should be paid on inpatient claims with dates of service on after December 6, 1995. The per diem rates paid are not fair and reasonable because they have been invalidated by the Texas Supreme Court and should not be used as a standard for determining fair and reasonable. The proper standard for determining fair and reasonable is the old law standard of fair and reasonable—not the invalidated per diem rates that were adopted when the new law was passed. A similar situation arose when old law claims were paid at the per diem rates because they had new law dates of service. Over the years, MAPA has submitted numerous claims to TWCC dispute resolution on behalf of many health care providers. In each case, the health care provider was awarded 100% of the total charges, less non-covered items such as cable television....We believe that this award and other similar awards clearly establish that TWCC defines 'fair and reasonable' as 100% of the total charges, less non-covered items."

**Amount in Dispute:** \$8,826.55

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary:** "After the ruling by the Court (and the denial of rehearing by the Texas Supreme Court), the T.W.C.C. sent a letter, dated February 24, 1997, to all insurance carriers and hospitals. The letter stated that hospital bills should be processed in accordance to the provisions of the Texas Labor Code, including Chapter 413. IntraCorp reviewed the findings of the Court, the letter by the T.W.C.C. and reviewed the Texas Labor Code. It is our position that the per diems listed in the 1992 HFG are consistent with the Texas Labor Code. We are instructing our clients to continue to pay acute care inpatient hospitals bills at the per diem rates listed in the 1992 HFG until the T.W.C.C. adopts a new guideline. For the reasons outlined in the previous paragraph, your appeal is denied. We considered the payment you previously received for your bill to be in accordance with the Texas labor Code. Please note, this correspondence addresses the per diem ruling since it was not identified [sic] that you were disputing the charges denied due to pre authorization."

**Response Submitted by:** IntraCorp, Three Metro Square, 12100 Ford Road, Ste 100, Dallas, TX 75234-7231

## SUMMARY OF FINDINGS

Date(s) of Service	Disputed Services	Amount In Dispute	Amount Due
July 29, 1996 Through August 6, 1996	Inpatient Hospital Services	\$8,826.55	\$0.00

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. Former 28 Texas Administrative Code §133.305, effective June 3, 1991, 16 *Texas Register* 2830, sets out the procedures for resolving medical fee disputes.
2. Former 28 Texas Administrative Code §134.1(f) effective October 7, 1991, 16 *Texas Register* 5210, sets out the reimbursement guidelines for the services in dispute.
3. This request for medical fee dispute resolution was received by the Division on July 14, 1997.
4. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - F-Technical Component
  - A-This procedure/supply must be pre-authorized in accordance with TWCC Rule 134.600. Also supplies assoc w/unauthorized proc/sup are disallowed.

### Findings

1. The insurance carrier denied disputed services with denial code A - " This procedure/supply must be pre-authorized in accordance with TWCC Rule 134.600. Also supplies assoc w/unauthorized proc/sup are disallowed " Division rule at 28 TAC §134.600, effective December 23, 1991, 16 *TexReg* 7099; states that "(a)The insurance carrier is liable for the reasonable and necessary medical costs relating to the health care treatments and services listed in subsection (h) of this section, required to treat a compensable injury, when any of the following situations occur: (1) there is a documented life-threatening degree of a medical emergency necessitating one of the treatments or services listed in subsection (h) of this section; (2) the treating doctor, his/her designated representative, or injured employee has received pre-authorization from the carrier prior to the health care treatments or services; or.. (3) when ordered by the commission." §133.307(h)(1) lists "all non-emergency hospitalizations" as health care treatments and services requiring pre-authorization. Review of the documentation submitted by the requestor finds that the requestor has not submitted documentation to support preauthorization or a medical emergency as required under §134.600. This denial code is therefore supported.
2. This dispute relates to inpatient hospital services. The former agency's *Acute Care Inpatient Hospital Fee Guideline* at 28 Texas Administrative Code §134.400, 17 *TexReg* 4949, was declared invalid in the case of *Texas Hospital Association v. Texas Workers' Compensation Commission*, 911 *South Western Reporter Second* 884 (Texas Appeals – Austin, 1995, writ of error denied January 10, 1997). As no specific fee guideline existed for acute care inpatient hospital services during the time period that the disputed services were rendered, the 1991 version of 28 Texas Administrative Code §134.1(f) applies as the proper Division rule to address fee payment issues in this dispute, as confirmed by the Court's opinion in *All Saints Health System v. Texas Workers' Compensation Commission*, 125 *South Western Reporter Third* 96 (Texas Appeals – Austin, 2003, petition for review denied). 28 Texas Administrative Code §134.1(f), effective October 7, 1991, 16 *Texas Register* 5210, requires that "Reimbursement for services not identified in an established fee guideline shall be reimbursed at fair and reasonable rates as described in the Texas Workers' Compensation Act, sec. 8.21(b), until such period that specific fee guidelines are established by the commission."
3. The former Texas Workers' Compensation Act section 8.21 was repealed, effective September 1, 1993 by Acts 1993, 73rd Legislature, chapter 269, section 5(2). Therefore, for services rendered on or after September 1, 1993, the applicable statute is the former version of Texas Labor Code section 413.011(b), Acts 1993, 73rd Legislature, chapter 269, section 1, effective September 1, 1993, which states, in pertinent part, that "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle."
4. 28 Texas Administrative Code §133.305(d)(7), effective June 3, 1991, 16 *Texas Register* 2830, requires that

the request shall include "copies of all written communications and memoranda relating to the dispute." Review of the documentation submitted by the requestor finds that the request does not include a copy of medical records or other written communications and memoranda pertinent to the dispute. The Division concludes that the requestor has not met the requirements of §133.305(d)(7).

5. Review of the submitted documentation finds that:

- The requestor's position statement asserts that "The health care provider's position is that fair and reasonable reimbursement should be paid on inpatient claims with dates of service on after December 6, 1995. The per diem rates paid are not fair and reasonable because they have been invalidated by the Texas Supreme Court and should not be used as a standard for determining fair and reasonable. The proper standard for determining fair and reasonable is the old law standard of fair and reasonable—not the invalidated per diem rates that were adopted when the new law was passed. A similar situation arose when old law claims were paid at the per diem rates because they had new law dates of service. Over the years, MAPA has submitted numerous claims to TWCC dispute resolution on behalf of many health care providers. In each case, the health care provider was awarded 100% of the total charges, less non-covered items such as cable television....We believe that this award and other similar awards clearly establish that TWCC defines 'fair and reasonable' as 100% of the total charges, less non-covered items."
- The Division finds that a reimbursement methodology based upon payment of a hospital's billed charges, or a percentage of billed charges, does not produce an acceptable payment amount. Such a reimbursement methodology would leave the ultimate reimbursement in the control of the hospital, thus defeating the statutory objective of effective cost control and the statutory standard not to pay more than for similar treatment of an injured individual of an equivalent standard of living. It also provides no incentive to contain medical costs. Therefore, a reimbursement amount that is calculated based upon a percentage of a hospital's billed charges cannot be favorably considered when no other data or documentation was submitted to support that the payment amount being sought is a fair and reasonable reimbursement for the services in dispute.
- The requestor does not discuss or explain how payment of the amount sought would result in a fair and reasonable reimbursement for the services in this dispute.
- The requestor did not submit documentation to support that the payment amount being sought is a fair and reasonable rate of reimbursement for the disputed services.
- The requestor does not discuss or explain how payment of the requested amount would satisfy the requirements of 28 Texas Administrative Code §134.1.

The request for additional reimbursement is not supported. Thorough review of the documentation submitted by the requestor finds that the requestor has not demonstrated or justified that payment of the amount sought would be a fair and reasonable rate of reimbursement for the services in dispute. Additional payment cannot be recommended.

### **Conclusion**

The Division would like to emphasize that individual medical fee dispute outcomes rely upon the evidence presented by the requestor and respondent during dispute resolution, and the thorough review and consideration of that evidence. After thorough review and consideration of all the evidence presented by the parties to this dispute, it is determined that the submitted documentation does not support the reimbursement amount sought by the requestor. The Division further concludes that the requestor failed to support its position that additional reimbursement is due. As a result, the amount ordered is \$0.00.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

### **Authorized Signature**

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Signature

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Medical Fee Dispute Resolution Officer

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10/21/2011  
Date

### ***YOUR RIGHT TO REQUEST AN APPEAL***

Either party to this medical fee dispute has a right to request an appeal. A request for hearing must be in writing and it must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**